IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3071 of 2004

LAL CHAND
V/S
STATE & ORS

Mr. KAILASH KHATRI, for the appellant / petitioner

Mr. HR SONI, ADDL.G.A.

Date of Order : 2.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner at length. It has come on record from the reply that there are already various litigations pending between the petitioner on the one hand, and Smt. Taro Bai on the other hand. This Taro Bai , is the mother of deceased Rajkumar, who had filed suit under Secs. 88 and 188 of the Rajasthan Tenancy Act, and on his death, Taro Bai has come on record as Legal Representative. It has also come on record from the reply, that S.H.O., Pilibanga, Distt. Hanumangarh, has filed a complaint under Sec. 145 Cr.P.C against the petitioner and Ved Prakash, so also Dhanna Singh son of Vichitra Singh. This Ved Prakash is son of Taro Bai, as mentioned above, and disclosing that there had been as many as 7 criminal cases of different offences like 307, 332,353, 333, 324, 323, 336, 147, 149, 452, 447, 382, 392 etc etc. Of the Penal Code, having been lodged by different parties, and there is eminent danger of the breach of peace on account of dispute regarding possession of the land, whereupon, a preliminary order has been drawn, and the land had been attached under Sec. 146 Cr.P.C, and Tehsildar had been appointed as Receiver. It is this Tehsildar, who had advertised the auction notice for cultivatory possession over the land in dispute.

According to the averments of the writ petition, the petitioner is in possession of land since 1991, and time & again he is paying the Lagan, and the land of other similarly situated persons has been regularised, while petitioner has been subjected to differential treatment, and Tehsildar had issued an auction notice for auctioning the above land on 19.6.04, whereupon the petitioner moved an application for dismissal of auction notice. Thereafter the Collector forwarded the application to the Tehsildar for action, and Tehsildar has now issued an auction notice on 15.7.2004, which is under challenge in this petition.

Significantly, in the entire writ petition, the petitioner has nowhere even disclosed the pendency of aforesaid litigations, or the attachment of land under Sec. 146 Cr.P.C. From the averments made in para no.7 of the writ petition, it transpires that temporarily cultivation lease granted to the similarly situated persons has been regularized, while the petitioner was not granted any temporary cultivation lease. Likewise, the petitioner has alleged in para no.4 of the writ petition that he had been paying Lagaan during the period of his possession, while receipts produced by the petitioner show that petitioner had paid “Tawaan”. The Lagaan is a land revenue, while Tawaan is a penalty for illegal possession. Thus the petitioner made deliberate mis-statement of fact. Then a look at the application Annex.7 in conjunction with the pleadings mentioned in para no.8 of the writ petition, shows that petitioner has tried to mislead this court, by taking a plea that he moved an application for dismissal of auction, which application was forwarded by the Collector to the Tehsildar for action and the Tehsildar has issued new auction notice, while a perusal of application (Annex.7), shows that only objection raised in this application was, that auction was required to be advertised with the

notice of seven days, while in the present case, notice was of six days' only and, therefore, it was prayed that the land be put to auction again. It is in furtherance thereof that land has been advertised for auction again. Thus the petitioner never requested for dismissal of auction , and only raised objection on the ground of auction notice being deficit in time, and prayed for re-auction of the land, while in the writ petition, he has come with a case that as if he was aggrieved of the auction, and he applied for dismissal of auction, still the land has been advertised for auction.

Looking to the conduct of petitioner, I am not inclined to interfere in favour of petitioner.

Even otherwise on merit also, in view of fact that petitioner claims to be in un-authorised possession of land, and regularization made in favour of other person is not shown to have been made to the persons similarly situate and in similar circumstances that apart the land in question was allotted earlier to some other person, though that allotment had been cancelled, but then that cancellation is subject matter of litigation, and petitioner's possession also does not appear to be continuous, clear or peaceful, rather criminal cases are lodged between the petitioner on one hand, and Legal Representatives of earstwhile allottee, and one Dhanna Singh, on the other hand. In these circumstances, on merit also, I do not find any sufficient ground to entertain the writ petition. The same is, therefore, dismissed.

(N P GUPTA),J.

/Srawat/